



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

June 13, 2008

Mr. Jimmie S. Doss, Registered Agent  
9080 Barbee Lane, Suite 100  
Knoxville, Tennessee 37923

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4773**

Subject: DIRECTOR'S ORDER NO. WPC08-0065  
THE VILLAGES AT HARDIN VALLEY  
KNOX COUNTY, TENNESSEE

Dear Mr. Doss:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>BURR, LLC</b>	)	
	)	
<b>and</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>R &amp; R EXCAVATING COMPANY, LLC</b>	)	
	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NUMBER WPC08-0065</b>
	)	

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Burr, LLC (hereinafter "Respondent Burr") is an active limited liability company licensed to conduct business in the State of Tennessee and is the owner/developer of a residential and commercial development known as The Villages at Hardin Valley, located on Hardin Valley Road in Knox County (hereinafter the "site"). Service of process may be made on Respondent Burr through its Registered Agent, Jimmie S. Doss, at 9080 Barbee Lane, Suite 100, Knoxville, Tennessee 37923.

### III.

R & R Excavating Company, LLC (hereinafter “Respondent R&R”) is an active limited liability company licensed to conduct business in the State of Tennessee and was contracted by Respondent Burr to conduct construction activities at the site. Service of process may be made on Respondent R&R through its Registered Agent, Stephen A. Irving, at 344 West Outer Drive, Oak Ridge, Tennessee 37830.

### JURISDICTION

#### IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

#### V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

## VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a completed Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

## VII.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VIII.

The unnamed tributary to Connor Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **FACTS**

### **IX.**

On August 28, 2006, Jim Pinkston submitted an ARAP application to the division's Natural Resources Section (NRS) requesting authorization to encapsulate 826 linear feet of an unnamed tributary to Connor Creek. The NRS received a completed application on January 24, 2007, and Respondent Burr was issued written authorization that became effective on January 26, 2007, expires January 25, 2012, and was assigned tracking number NRS06.292. The written authorization required compensatory wetland mitigation consisting of the enhancement of 1600 linear feet of Connor Creek and an unnamed tributary to Connor Creek.

### **X.**

On October 2, 2006, Respondent Burr purchased the site.

### **XI.**

On October 26, 2006, Jim Pinkston submitted a NOI, SWPPP, and appropriate fee to the division requesting coverage under the TNCGP for construction activities at the site.

### **XII.**

On December 15, 2006, the division issued coverage to Jim Pinkston under the TNCGP for construction activities at the site, which expires May 30, 2010, and was assigned tracking number TNR132288.

### **XIII.**

On April 16, 2007, Jim Pinkston submitted an updated NOI to the division that named Respondent R&R as the primary contractor at the site.

### **XIV.**

On October 23, 2007, division personnel from the Knoxville Environmental Field Office (KEFO) conducted a site inspection and noted that the Respondents had not installed two sediment basins required by the SWPPP prior to conducting land disturbance activities. Division personnel also noted that EPSC measures at the site were inadequate, had not been maintained, and were not in accordance with the SWPPP. The storm drainage system did not have adequate inlet protection, which had allowed sediment-laden water to migrate into an unnamed tributary to Connor Creek, resulting in a condition of pollution. The Notice of Coverage (NOC) was not posted on site, nor was the SWPPP available for review as required by the TNCGP.

### **XV.**

On October 24, 2007, the division attempted to telephone Jim Pinkston to inform him of the violations noted during the October 23, 2007, site inspection, but was informed that Jim Pinkston had died on August 21, 2007, and left his estate to his son, Jake Pinkston, President of Burr, LLC. The division discussed the violations with Respondent Burr and also e-mailed him a copy of the inspection report.

### **XVI.**

On December 10, 2007, division personnel conducted a follow-up site inspection and noted that EPSC measures continued to be inadequate, had not been maintained, and were not in

accordance with the SWPPP. Sediment continued to migrate off site and into the unnamed tributary, resulting in a condition of pollution to waters of the state. Division personnel also noted that exposed chemicals had been left on graded material and that the Respondents had installed an additional construction entrance not included in the SWPPP. The Respondents had not installed the two sediment basins required in the SWPPP. The NOC was not posted on site, nor was the SWPPP available for review as required by the TNCGP.

## **XVII.**

On January 10, 2008, division personnel conducted a follow-up site inspection. Division personnel noted that EPSC measures continued to be inadequate, had not been maintained, and were not in accordance with the SWPPP. Sediment continued to migrate off site and into the unnamed tributary, causing in a visible color contrast and large accumulations of sediment, resulting in a condition of pollution. Division personnel also noted that two unauthorized check dams had been installed in the stream. The NOC was not posted on site, nor was the SWPPP available for review as required by the TNCGP.

## **XVIII.**

On February 5, 2008, division personnel conducted a follow-up site inspection. Division personnel noted that EPSC measures continued to be inadequate, had not been maintained, and were not in accordance with the SWPPP. Sediment continued to migrate off site and into the unnamed tributary, causing deposits, up to 8 inches in depth, for approximately .25 miles downstream, resulting in a condition of pollution. The NOC was not posted on site and only a small portion of the SWPPP had been available for review.

## **XIX.**

On February 6, 2008, the division issued a Notice of Violation (NOV) to Respondent Burr for the violations observed during the February 5, 2008, site inspection. Respondent Burr was reminded of the need to install and maintain adequate EPSC measures, to install two sediment basins, and to install adequate protection to the storm drainage inlets in accordance with the SWPPP. Respondent Burr was further advised to post the NOC and to have the entire SWPPP available for review, at the site, as required by the TNCGP. Respondent Burr was also reminded of the need to stabilize those portions of the site where construction activity had ceased for longer than 15 days. The division scheduled a Compliance Review Meeting (CRM) with Respondent Burr on February 13, 2008. Respondent Burr was further instructed to submit a Corrective Action Plan (CAP) for the removal of sediment from the unnamed tributary and to restore it to its natural state.

## **XX.**

On February 13, 2008, a CRM was held at the KEFO with the Respondents to further discuss the CAP and the installation of the required sediment basins at the site. The Respondents were instructed to remove the accumulated sediment from the storm water infrastructure. The division forwarded a summary of the CRM to Respondent Burr and requested a written response, within two weeks of receipt of the summary, detailing the measures to be implemented to bring the site into compliance, including an estimate of the time it would take to complete those measures.

## **XXI.**

On February 15, 2008, Respondent Burr submitted a written plan of action to the division as requested. Upon review, Respondent Burr was informed that the plan addressed all of the division's concerns and was instructed to begin the corrective action measures immediately.



## **XXII.**

On March 4, 2008, Respondent Burr submitted an updated NOI to the division that named Respondent Burr as the site owner/developer.

## **XXIII.**

On April 29, 2008, division personnel conducted a follow-up site inspection and noted that a basin and a storm drainage outlet structure had been installed, but that water had not yet been diverted into the basin. Division personnel further noted that a portion of the sediment had been removed from the stream channel and that the check dams had not been removed, they were just spread throughout the creek bed.

## **XXIV.**

During the course of the investigation, the division incurred DAMAGES in the amount of TWO HUNDRED NINETY SEVEN DOLLARS AND SEVENTY SEVEN CENTS (\$297.77).

## **VIOLATIONS**

## **XXV.**

By failing to comply with the terms and conditions of the TNCGP, and by altering waters of the state without authorization under an ARAP, as described herein, the Respondents have violated T.C.A. Sections §§69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## **XXVI.**

By causing a condition of pollution to the unnamed tributary to Connor Creek, as described herein, the Respondents have violated T.C.A. §69-3-114(a):

T.C.A. §69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

## **XXVII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondents.

1. The Respondents shall, within 7 days of receipt of this Order and Assessment, establish and maintain effective EPSC measures including, but not limited to, the installation of berms and ditches to divert water into the sediment basin on-site, in accordance with the revised SWPPP, such that no additional sediment is allowed to migrate offsite and enter waters of the state.
2. The Respondents shall, within 14 days of receipt of this Order and Assessment, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Division of Water Pollution Control Manager at the KEFO at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 30 days of receipt of this Order and Assessment, submit a Corrective Action Plan (CAP) that will include details regarding the manual methods used in the removal of the accumulated sediment and the check dam rock from the unnamed tributary to Connor Creek, to restore the unnamed tributary to its natural state, and a time frame to complete the work. The written approval of the CAP by the division will not require any additional ARAP coverage. The CAP shall be submitted to the Division of Water Pollution Control Manager at the KEFO. Any deficiencies to the CAP shall be corrected by the Respondents within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Division of Water Pollution Control Manager at the KEFO to the address listed in item 2, above.

5. The Respondents shall, within 60 days of division approval, complete the activities outlined in the approved CAP and submit notification of completion to the Division of Water Pollution Control Manager at the KEFO at the address listed in item 2, above.
6. The Respondents shall pay a CIVIL PENALTY in the amount of FIFTY NINE THOUSAND AND FIVE HUNDRED DOLLARS (\$59,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00).
  - b. If the Respondents fail to comply with Part XXVII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
  - c. If the Respondents fail to comply with Part XXVII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$7,250.00), payable within 30 days of default.
  - d. If the Respondents fail to comply with Part XXVII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$7,250.00), payable within 30 days of default.
  - e. If the Respondents fail to comply with Part XXVII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.

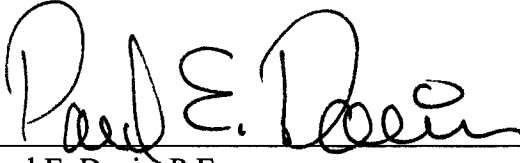
- f. If the Respondents fail to comply with Part XXVII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
7. The Respondents shall pay DAMAGES to the division in the amount of TWO HUNDRED NINETY SEVEN DOLLARS AND SEVENTY SEVEN CENTS (\$297.77) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 13<sup>th</sup> day of June 2008.

  
\_\_\_\_\_  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing, the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.